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IN THE

Supreme Court of the United States

October Term, 1982

FEDERAL ELECTION COMMISSION,
Petitioner,

v.

HALL-TYNER ELECTION CAMPAIGN COMMITTEE, *et al.,*
Respondents.

ON PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

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Question Presented.

Whether both courts below erred in finding from the undisputed facts that there was a reasonable probability that compliance by the political committee for the candidates of the Communist Party at the 1976 presidential election with the provisions of the Federal Election Campaign Act requiring it to record and report the names of contributors would have subjected the latter to threats, harassment or reprisals from government officials or private parties.

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BRIEF FOR RESPONDENTS IN OPPOSITION.

Statement of the Case.

The petitioner, Federal Election Commission (the Commission), seeks review of the judgment of the United States Court of Appeals for the Second Circuit affirming

an order of the United States District Court for the Southern District of New York granting summary judgment in favor of respondents, Hall-Tyner Election Campaign Committee (The Committee), and Frances Bordofsky, its treasurer, in an action by the Commission for alleged violations of §§ 432(c)(2) and 434(b)(2) of the Federal Election Campaign Act (the Act)[1] in the course of the 1976 presidential election campaign.

The Committee was the principal campaign committee for Gus Hall and Jarvis Tyner, the candidates of the Communist Party, USA (the Party), for president and vice-president of the United States at the 1976 election. The Party appeared on the ballot in 19 states and was officially credited with 58,689 votes for its presidential ticket (Pet.[2] 21a, 30a).

The petition for certiorari, pages 2-3, sufficiently describes §432(c)(2) (the recordkeeping requirement) and §434(b)(2) (the reporting requirement). But it is misleading in making it appear in the questions presented and throughout that the relevant reporting requirement was limited to contributions in excess of $200 whereas, in 1976, the date of the alleged violations charged in the complaint, the threshold was $100 (see Pet. 3, n. 2).[3]

On March 5, 1976, the Committee's general counsel rendered it a written opinion that, under this Court's decision in *Buckley v. Valeo*, 424 U. S. 1 (1976), the reporting

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[1]1979 amendments to the Act renumbered these sections as §432(c) and §434(b)(3)(A). See Petition for Certiorari, 3, n. 2. Like the courts below, we use the numbering in effect at the time of the alleged violations.

[2]We so designate the petition for certiorari.

[3]As we later show, *infra*, page 7, the petition makes similarly misleading use of an inapplicable time frame to argue that the evidence of FBI harassment was "remote."

and recordkeeping requirements were unconstitutional as applied to the Committee. Pursuant to this opinion, contributors were advised that they might, if they wished, make their contributions anonymously in which case the Committee would neither record nor report their identities, and the Commission was so advised in a note appended to each Committee report (Pet. 4a).

The proceedings before the Commission and its institution of this action are sufficiently described in the opinion of the Court of Appeals (Pet. 4a-5a).

We reserve for the argument, *infra*, a summary of the proof adduced by respondents in support of their motion for summary judgment. Suffice it to say, at this point, that the petition's statement of the facts scants or misrepresents them where it does not disregard them entirely, and that its summary of the opinions below (Pet. 6-8) is as tendentious as its version of the facts.[4] Had the proof been as portrayed by the Commission, it is inconceivable that four seasoned federal judges could have found it more than sufficient to satisfy the evidentiary standard of *Buckley*: the existence of a reasonable probability that Committee compliance with the reporting and recordkeeping requirements would have subjected its contributors to threats, harassment or reprisals from government officials or private parties.

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[4]Significantly, although the case turns on its facts, the petition is devoid of a single reference to the record which has been transmitted to the Court at respondents' request.

Reasons for Denying the Writ.

The courts below were clearly right in finding from the undisputed facts that there was a reasonable probability that Committee compliance with the reporting and record-keeping requirements would have subjected its contributors to threats, harassment or reprisals from government officials or private parties.

The material facts are undisputed (Pet. 33a). The decisive issue which the petition presents is whether these facts support the finding of the courts below as to the reasonably probable consequences to Committee contributors had it recorded and reported their names as required by the terms of the Act.

The proof adduced by respondents has three facets: evidence of 40 years of FBI intrusion by every conceivable covert means into the affairs of the Party and the lives of its supporters; the existence of a multitude of oppressive anti-communist laws, many of them directed against the Party by name, with which the federal and state statute books are studded, and the affidavits of Committee treasurer Bordofsky and of twelve 1976 contributors to the Committee. In what follows, we examine each of these facets in turn and meet the Commission's effort to misstate, belittle or distort them.

A. FBI harassment.

In resisting respondents' subpoena for the records of its anti-communist operations since 1936, the FBI acknowledged that it had upwards of 26 million pages of

such records in its Washington headquarters alone (affidavit of James W. Awe, pp. 6-7).[3] The nature of the FBI operations which these records reflect was revealed in the Final Report, dated April 26, 1976, of the Senate Select Committee to Study Government Operations with Respect to Intelligence Activities, S. Rep. No. 755, 94th Cong., 2d Sess. (the Senate Report). Respondents supplied the District Court with a summary of the pertinent findings of the Senate Report, with appropriate page references (Pet. 26a). The Commission acknowledged in its brief below that judicial notice may be taken of the report and it does not question the accuracy of respondents' summary.

As appears from the summary (exhibit 5 to affidavit of John J. Abt in support of motion for summary judgment, pp. 2-5), the Senate Report made the following findings:

1. Since 1936, the Party, its members and anyone suspected of "being under the influence of" the Party, have been targeted by the FBI for "intelligence investigations" which have "produced intelligence reports and massive files on lawful groups and law-abiding citizens."

2. In the early 1940's the FBI inaugurated a program, later known as CPUSA COINTELPRO, to harrass and disrupt the Party and those suspected of being under its influence. Between 1956 and 1971, 1388 operations were authorized under this program. They included anonymous letters to the employers and spouses of targeted persons to provoke their

[3]This affidavit is included in the record (document No. 10) among the papers which were transferred to the District Court below from the District Court for the District of Columbia where they were originally filed.

discharge or destroy their marriages and falsely and anonymously labelling targeted persons as government informers, exposing them to disgrace and physical violence.

3. The FBI has conducted warrantless electronic surveillance in 15 Party "target categories," ranging from "Communist Party Headquarters" to "Commnist Party Apologist."

4. It has engaged in warrantless break-ins of homes and offices ("black bag jobs") to secure membership and mailing lists.

5. It has infiltrated the Party with undercover informants.

6. It has compiled lists of persons to be apprehended in a national emergency because of their "subversive associations and ideology."

7. It has conducted a mail opening program targeted against citizens professing "pro Communist sympathies."

8. It has harassed targeted persons by instigating IRS audits and investigations of their tax returns.

The Commission would have it appear (Pet. 5) that the only form of Party harassment used by the FBI was the COINTELPRO which, it says, ended in 1971. Based on these premises, the Commission's major complaint against the courts below is that they did not inquire whether "a reasonable probability of harassment *still* exists" (Pet. 16, emphasis supplied) or, as phrased in its questions

presented, "whether there was any evidence of *recent* threats or harassment" (emphasis supplied). The complaint rests on an erroneous time frame for relevant evidence of harassment in this case.

This is a suit for a civil penalty and an injunction on account of alleged violations of the Act in connection with the 1976 election campaign. The issue with respect to FBI harassment, therefore, is its probable effect on contributors to that campaign, not to some subsequent one.[6] Evidence of post-1976 harassment is relevant only insofar as it may cast light on the situation in the critical year. On the other hand, because the chilling effect of harassment lingers on after it has been discontinued, especially where it has been prolonged and severe, the evidentiary standards of *Buckley* include (at 74) evidence of *past* harassment of the organization or its members.

We proceed to examine the evidence of FBI harassment in the light of the applicable time frame.

The affidavit of an FBI special agent submitted in opposition to respondents' subpoena states that his review of the CPUSA COINTELPRO file showed that this program "ceased as of January 1, 1972" (affidavit of William O. Cregar, p. 4). Even assuming that the program, in fact, terminated on that date,[7] it is obvious that the effects of

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[6]All of the cases cited by the Commission (Pet. 16, n. 10) in support of its complaint against the courts below involved actions by political committees of the Socialist Workers Party permanently to enjoin enforcement of disclosure requirements against themselves and future committees. There, of course, the result turned on evidence of current harassment.

[7]The Senate Report found (Book III, p. 12) that the records of post-1971 COINTELPRO operations are located in other files and that "COINTELPRO-type activities may continue today under the rubric of 'investigations.' "

this infamous operation which "sometimes caused serious emotional, economic or physical damage" to the victims (Senate Report, Book II, p. 216) would not evaporate in four years, especially since, as the Court of Appeals observed (Pet. 14a, n. 16), the Senate Report appeared and was publicized in 1976 so that "[t]he potential chill of this program may very well have been at its zenith just as the Committee was soliciting contributions."

Again, compilation of the FBI's so-called "Administrative Index" of alleged subversive individuals to be apprehended in a national emergency was not discontinued until January, 1976, and "is still being maintained" (Cregar affidavit, pp. 4-5). FBI use of the Internal Revenue Service for tax harassment and the CIA mail opening program, conducted in collaboration with the FBI, did not terminate until 1973, and the FBI-National Security Agency cable interception program continued until 1975 (Exhibit 5 to Abt affidavit, pp. 4-5).

While a 1966 FBI directive purported to terminate the use of "black bag jobs" against domestic targets, the directive did not apply to foreign intelligence investigations where, in the opinion of the Department of Justice, they may be properly used (Sen. Rep., Book III, pp. 365, 369). The FBI so designates its investigation of the Party (Cregar affidavit, p. 3).[8]

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[8]Contrary to the Commission's assertion (Pet. 23, n. 14), the Senate Report (*ibid.*) did *not* find that the use of "black bag jobs," even in domestic intelligence matters, was discontinued in 1966, but found evidence of their continuance after that date, as recent revelations have confirmed. See, e.g., letter dated February 19, 1980, from FBI Director William H. Webster to former Attorney General Benjamin R. Civiletti, released to the press July 2, 1980, reporting on his investigation of "black bag jobs" performed in the late 1960's and 1970's.

Finally, nothing in the Senate Report or in the FBI affidavits submitted in opposition to the subpoena remotely suggests that pervasive FBI electronic eavesdropping and surveillance by informers are not still being used in its ongoing so-called foreign intelligence investigation pursuant to an October 1976 directive of former Attorney General Levi (Cregar affidavit, p. 5).[9] Acting under this directive, the FBI by May, 1979, had amassed at least an additional 90,000 pages of investigative records at its headquarters office alone (Abt affidavit, Ex. 13).

As the foregoing analysis demonstrates, the Commission's assertion (Pet. 17) that the finding below was based on FBI practices "which have long been abandoned" was made with deliberate and total disregard for the factual record. The Commission displays a like disregard for the legal effect of the judgment below, which does not immunize the Party "from complying with this important federal statue *forever*" (Pet. 17, emphasis supplied) but only for the 1976 election campaign.

B. Federal and state anti-communist legislation.

The Party and its members have been and are the subjects of a mass of legislation, federal and state, which stigmatizes them as seditious conspirators and subversive foreign agents, threatens them with onerous civil disabilities, and makes Party membership an element in a number of criminal offenses. While §§ 432(c) (2) and 434(b) (2) apply to contributors, not members, *Buckley* points out (at 66) that, "Our past decisions * * * have treated them interchangeably," and *Buckley* does likewise.

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[9]The directive was submitted to the District Court *in camera* under a claim of privilage (Pet. 27a, n. 9).

We turn first to the federal legislation.

The Smith Act, 18 U.S.C. §2385, makes it a crime to conspire to advocate the violent overthrow of the government or to be a member of an organization which so advocates. Between 1948 and 1956, 145 members of the Communist Party were indicted under the conspiracy provisions of that Act. Of these 108 were tried, convicted and sentenced to terms aggregating 418 years; 28 served prison sentences. Caute, *The Great Fear* (N. Y., 1978), page 208. Nineteen persons were indicted under the membership provision, several convicted, and one served a prison sentence. Belknap, *Cold War Political Justice* (Westport, Conn., 1977), pages 262-64.

There have been no Smith Act prosecutions since 1961, following *Yates v. United States,* 354 U. S. 298 (1957), and *Noto v. United States,* 367 U. S. 290 (1961). But the statute has never been declared to be unconstitutional and it remains on the books as an overhanging threat to Party members and adherents.

The Subversive Activities Control Act, 50 U.S.C. §781 *et seq.,* is prefaced by lengthy findings condemning the "world Communist movement" and the "Communist movement in the United States" which is declared to be "a clear and present danger to the security of the United States and to the existence of free American institutions." Section 4 of this statute (50 U.S.C. §783) makes it a crime to conspire to "perform any act which would substantially contribute to the establishment in the United States of a totalitarian dictatorship."

Other provisions of the SACA impose severe criminal and civil sanctions against an organization and its

members when the organization is found by the Subversive Activities Control Board to be a "Communist-action organization." A 1953 Board finding to that effect was followed by prolonged litigation in which most of these provisions were held to be unenforceable or unconstitutional.[10] But the act remains on the books, including the congressional findings and §4, which has never been litigated, criminalizing the precise activity that Congress found the Party and its adherents to be engaged in.

The Communist Control Act, 50 U.S.C. §841 *et seq.*, finds among other things (§841) that the Party "is in fact an instrumentality of a conspiracy to overthrow the Government of the United States" whose members "are organized, instructed, and disciplined to carry into action slavishly the assignments given them by their hierarchical chieftans." After more of the same, §841 concludes that "the Communist Party should be outlawed." §842 then provides that "whatever rights, privileges, and immunities which have heretofore been granted to said [Communist] part or any subsidiary organization by reason of the laws of the United States or any political subdivision thereof, are terminated."[11]

Four additional federal laws that impose onerous disabilities on Party members require no comment. 42

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[10]See *Communist Party v. S.A.C.B.*, 367 U. S. 1 (1961); *Communist Party v. United States*, 384 F. 2d 957 (C.A.D.C. 1967); *Albertson v. S.A.C.B.*, 382 U. S. 70 (1965); *Aptheker v. Secretary of State*, 378 U. S. 500 (1964); *United States v. Robel*, 389 U. S. 258 (1967); *Boorda v. S.A.C.B.*, 421 F. 2d 1142 (C.A.D.C. 1968), cert. den. 397 U. S. 1042.

[11]Efforts to enforce §842 have had a mixed reception. *Salwen v. Rees*, 108 A.2d 265 (Sup. Ct., N. J., 1954); *Communist Party v. Catherwood*, 367 U. S. 389 (1961); *Mitchell v. Donovan*, 290 F. Supp. 642 (D. Minn. 1968); *Blawis v. Bolin*, 358 F. Supp. 349 (D. Ariz. 1973). The Act, however, remains in effect.

U.S.C. §2000-e 2(f) makes the members ineligible for the benefits of the equal employment opportunities provisions of the Civil Rights Act. 8 U.S.C. §§ 1451(c) and 1251(a) make naturalized members liable to the revocation of their citizenship, whereupon they may be deported. 42 U.S.C. §1874(d) (2) (A) makes it a crime for a person who is a member of an organization against which a final registration order of the Subversive Activities Control Board is in effect to apply for or use a National Science Foundation Award. And 42 U.S.C. §410(a) (17) excludes from covered employment under the Social Security Act service in the employ of any organization which is subject to such a registration order.

The array of state anti-communist laws is surveyed in the appendix to this brief (*infra*, p. 20). They include provisions denouncing the Party and its members as seditious foreign agents, making it a crime to be a Party member or contributor, requiring members to register with state authorities, making them ineligible for public employment, mandating the teaching of the evils of communism in the public schools and forbidding the advocacy of communism there, denying members the benefits of state fair employment laws and authorizing the denial to them of pharmacy licenses.

As both courts below found (Pet. 13a, n. 15, 26a), the mere presence on the statute books of the federal and state legislation reviewed above provides massive evidence of the "manifestations of public hostility" against the Party, its members and supporters which *Buckley* found (at 74), "may be sufficient" to relieve a minor party from compliance with the Act's disclosure requirements.[12]

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[12]As this Court noted in *Communist Party v. Subversive Activities Control Board, supra*, at 102, "the public opprobrium and obloquy which may attach to an individual listed with the Attorney General as a member of a Communist-action organization is no less considerable than that in * * * *N.A.A.C.P.* and *Bates.*"

But they do more. Many of these laws expose Party members and supporters to a wide variety of drastic civil sanctions. Others make association with the Party an element of various criminal offenses. In recognition of the latter, the Supreme Court has held in an unbroken line of decisions that "mere association with the Communist Party presents sufficient threat of prosecution to support a claim of privilege [against self-incrimination]." *Albertson v. Subversive Activities Control Board, supra,* at 77, and cases there cited. The rule of these cases has never been withdrawn or modified.

Association with no other political party entails a like threat.

Disclosure of the names of the Committee's contributors would expose them to a threat of prosecution which *Albertson* held sufficient to support a claim of privilege. To compel the Committee to make a disclosure which presents so substantial a threat of criminal prosecution of its contributors would, to paraphrase *Buckley* (at 71), "deter contributions to the point where [the Committee] could not survive."

The Commission argues (Pet. 19) that because the anti-communist statutes reviewed above have not been invoked "in recent times," there was no reasonable probability of their use against the Committee's 1976 contributors. The opinion of the Court of Appeals should have been sufficient to lay that argument to rest when the Commission advanced it there (Pet. 13a-14a). It may be added by way of illustration that New York's Criminal Anarchy statute, Penal Law §240.15 (former §§ 160-161) was placed in moth balls for some 40 years following the convictions of a number of Communists under it in the 1920's, e. g.,

Gitlow v. New York, 268 U. S. 652 (1925). It was not resurrected until 1964 when it was used to convict a defendant whom the New York Court of Appeals described as a member of a "splinter communist club." *People v. Epton,* 19 N. Y. 2d 496 (1967), cert. den. and appl. dismd. 390 U. S. 29 (1968). It was doubtless with such episodes in mind that *Albertson v. S.A.C.B., supra,* at 77, cited §4 of the Subversive Activities Control Act as an example of a law which presented a sufficient threat of prosecution to support a claim of the privilege although it had not been invoked in the 15 years since its enactment.

C. The affidavits.

In support of their motion for summary judgment, respondents submitted the affidavit of respondent Bordofsky, the Committee treasurer and an experienced Party fund raiser, describing the efforts of herself and others to raise money for the 1976 election campaign. They found, with few exceptions, that those solicited declined to contribute, primarily because of their fear of FBI surveillance and harassment, unless assured that their contributions would remain anonymous (Abt affidavit, Ex. 10). The Commission has never questioned the truthfulness of Bordofsky's statements or explored her credibility by deposition or otherwise.

The Bordofsky affidavit was corroborated by the affidavits of 12 contributors, submitted at the suggestion of the District Court (Pet. 28a, n. 10) after it became apparent that the FBI, on the one hand, would adamantly resist production of the subpoenaed records and, on the other, that they were too voluminous to permit the Attorney General to assert a valid claim of privilege (FBI Memorandum in Reply to Defendants' Memorandum in

Opposition to Subpoena).[13] As the court proposed, the affidavits were submitted *in camera* and copies were supplied to the Commission with the names of the affiants and other identifying information expunged (Pet. 28a). Copies of the expunged affidavits are included in the supplemental record which has been transmitted to the Court.

It appears from the affidavits that each affiant contributed more than $50 to the Committee in 1976. All of the affiants made their contributions in cash and only after receiving the assurance of a representative of the Committee that it would not make a record of their names and would otherwise respect their anonymity. Their insistence on anonymity stemmed from their knowledge of the activities of the FBI and other governmental agencies in harassing the Party and persons known or suspected of being its supporters. They believe that if their names were to appear in the records of the Committee, or if they were to contribute by check, their identities as supporters of the Party would become known to the FBI through an informer or otherwise and that the FBI would use this knowledge to subject them to surveillance and other forms of harassment. The forms of harassment which the affiants fear vary with their individual circumstances and include loss of employment, customers or patients, loss of

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[13] A valid claim of privilege would have required the Attorney General's personal examination of the records. *United States v. Reynolds*, 345 U. S. 1, 8 (1953). The issue of the subpoena was mooted by the grant of summary judgment (Pet. 21a, n. 2). The FBI's conditional offer to produce subpoenaed documents dated subsequent to September 1, 1976 (FBI Memorandum in Reply to Defendants' Memorandum in Opposition, p. 9), referred to by the Commission (Pet. 6, n. 3) was spurious for the reason, among many others, that it would have denied respondents records of FBI harassment during all but two months of the 1976 campaign as well as of all past harassment.

citizenship by a naturalized citizen, and the hostility of their neighbors and associates.[14]

D. The recordkeeping requirement.

The Commission urges (Pet. 20) that whatever the action of the Court with respect to the reporting requirement, the decision below on the recordkeeping requirement should be reviewed. If the latter is permitted to stand, it is argued, the Commission will be denied the means of detecting violations of the Act's $1,000 ceiling on the contribution of a single individual to a Communist Party candidate.

Buckley did not specifically address itself to the First Amendment aspect of the recordkeeping requirement. But the principles it enunciated are as applicable to recordkeeping as they are to reporting on the unique facts of this case.

The Senate Report establishes that the FBI has long been engaged in amassing the names of persons with associational ties with the Party. It has employed informers, "black bag jobs," electronic surveillance and other covert means to garner names from every possible source and has used the information so obtained to list the persons as "subversives," stigmatize them with "a badge of infamy" (*Weiman v. Updegraf*, 344 U. S. 183, 191 [1952]), and otherwise to harass them. Committee records

[14]The Commission complains (Pet. 18) that the courts below failed to inquire whether Committee contributors whose names were recorded and reported suffered any adverse consequences. But plainly, contributors who indicated their willingness to be listed by name did so because they had already been publicly identified as Party members or supporters and hence had nothing to fear from a further disclosure of their associational ties.

of contributors are too rich a reservoir of names to be passed over. It is highly significant that although the subpoena called for FBI records of break-ins, infiltration by informers and electronic surveillance targeted against the Committee (Cregar affidavit, p. 2), the FBI has never disavowed the existence of such records.

The plain fact is that to keep Committee records of the names of contributors is to report those names to the FBI. Under these circumstances, recordkeeping chills and restrains the exercise of First Amendment rights no less than reporting. This is confirmed by the affidavits, all of which speak of the fear of FBI access to the affiant's identity by informers or other covert means if his or her name were to appear in the Committee records. It follows that in the unprecedented circumstances of this case, the principles of *Buckley* are applicable to both forms of disclosure.

The Commission's speculation (Pet. 23, n. 14) that FBI access to Committee records identifying contributors could be circumvented by having its treasurer secrete them is too absurd for comment except to point out that if this device succeeded in making the records unavailable, they would be of no use for enforcement.

The Commission argues at length (Pet. 21-24) that adjudication of *its* right of access to Committee records must await the issuance of a Commission subpoena for them. But the argument misses the point. It is *FBI* access to records that is at issue here. The evidence shows that for more than 40 years the FBI has been ferreting out the names of Party members and supporters by every conceivable covert means so that the threat to First Amendment rights is not remote as it was in *California Bankers*

Association v. Shultz, 416 U. S. 21 (1974), but clear, present and ripe for adjudication.

Finally, the governmental interest in enforcing the limitation on individual contributions to the Committee is insubstantial. "The sole governmental interest that the Supreme Court [in *Buckley*] recognized as a justification for restricting contributions was the prevention of *quid pro quo* corruption between a contributor and a candidate." *Let's Help Florida v. McCrary*, 621 F. 2d 195, 199 (C.A. 5, 1980), quoted with approval in *Citizens Against Rent Control/Coalition for Fair Housing v. City of Berkeley*, ____ U. S. ____, 102 S. Ct. 434, 438 (1981).

This governmental interest is not served by limiting the size of contributions to Party candidates. For no one in his right mind could hope or expect to buy political favors or influence by contributing to them. Hence, as the District Court found (Pet. 32a-33a) the governmental interest is too slight to justify the abridgement of First Amendment rights that recordkeeping entails in the peculiar circumstances of this case.

Conclusion.

The courts below found, on the one hand, that the governmental interest in Committee compliance with the reporting and recordkeeping requirements was slight and, on the other, that the Party and its adherents are the objects of an unparalleled array of repressive measures and practices, federal and state, that chill the exercise of their First Amendment rights. Adherence to no other political party exposes the adherent to criminal prosecution, severe civil disabilities, stigmatization for disloyalty and FBI harassment, all solely because of his or her associational ties.

Indeed, the Court of Appeals found the evidence of the chilling effect of compliance with the reporting and recordkeeping requirements so compelling that it deemed it appropriate to censure the Commission for pursuing "so vigorously its demand for the names and addresses of the contributors to the Committee" (Pet. 17a).

Certiorari should be denied.

Respectfully submitted,

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APPENDIX.

Survey of State Anti-Communist Legislation

This is a survey of state anti-communist legislation in effect in 1976, the year in which the violations of the Act charged in the complaint are alleged to have occurred. The state laws are grouped by subject matter.

1. *Criminal Statutes Relating to Party Membership—*

Ten states have statutes making Communist Party membership illegal.[1] Of these, four make it a crime to contribute to the Party.[2] An additional twenty-four states have criminal statutes against sedition, subversion, "criminal syndicalism," or "criminal anarchism," which make it a felony to advocate the overthrow of the government by force or violence, or to become a member of or assist a group with those aims.[3]

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[1] Arizona: R.S. 13-707; Arkansas: Criminal Code §41-3973; Florida: Title 44, §876.02(5); Indiana: §35-26-2-4; Massachusetts: C. 264, §§ 16A, 17, & 19; Nebraska: §28-748(3); Oklahoma: 21 §1266.4(4); Tennessee: §39-4422; Texas: Tex.R.S. Art. 6889-3A, Sec. 5(4); Washington: §§ 9.81.030 & .083.

[2] Massachusetts: C. 264, §23; Oklahoma: 21 §1266.4(4); Texas: Tex. R.S. Art. 6889-3A, Sec. 5(4); Washington: §9.81.020(4).

[3] Alabama: §13-6-44, *et. seq.;* Alaska: §11.50.010-.040; California: Pen. C.A. §11400, *et. seq.;* Colorado: §§ 18-11-201 & 203; Georgia: §26-2204; Iowa: Title 35, ch. 689.8, *et. seq.;* Kansas: §21-3802; Louisiana: R.S. 14.115; Maine: 17 §3651; Maryland: Art. 85A §§ 2 and 3; Michigan: §§ 750.47, 750.545a, *et. seq.;* Minnesota: §609.405; Mississippi: §97-7-21, *et. seq.;* Montana: §94-7-503; Nevada: §203.115, *et. seq.;* New Hampshire: §648:1, *et. seq.;* New Jersey: 2A:148-16, *et. seq.*, & 2A:148-13, *et. seq.;* New York: Penal Law §240.15; North Carolina: §14-11, *et. seq.;* Rhode Island: §11-43-11, *et. seq.;* South Dakota: §22-8-6, *et. seq.;* Utah: §76-8-901, *et. seq.;* Vermont: Title 13, §3405; Virginia: §18.2-484; Wisconsin: §946.03.

2. *Legislative Findings Concerning the Party's "Subversive" Role*—There have been numerous state legislative findings that the Communist Party is a subversive organization that seeks the overthrow of the government by violent and unconstitutional means.[4]

3. *Statutes Requiring Registration by the Party or its Members*—Seven states have statutes requiring the Party or its members to register.[5] Michigan's version requires anyone making a contribution to the Party to register, pursuant to its provision defining a contributor as a Communist.[6] Two other states, California and South Carolina, have broader registration statutes that do not specifically mention the Party but require "subversive organizations" to register.[7]

4. *Provisions Relating to Public Employment*—Fourteen states have statutes making Party members ineligible

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[4]Arizona: R.S. 13-707(c), 16-205; Arkansas: Criminal Code §41-3972; California: Gov. C.A. §1027.5; Ed. C.A. §7000; Georgia: Preamble of Sedition and Subversive Activities Act, §92A-1203; Indiana: §35-26-2-1, *et. seq.;* Louisiana: R.S. 14:358; Michigan: §752.321; New Mexico: §12-4-1, *et. seq.*, §4-15-1, *et. seq.;* Oklahoma: §1266.1; Tennessee: §39-4421; Texas: Art. 6889-3A, Sec. 1; Washington: §9.81.083; Wyoming: §9-12-103.

[5]Arkansas: Criminal Code §41-3968, *et. seq.;* Delaware: 20 §3501, *et. seq.;* Louisiana: R.S. 14:358, *et. seq.;* Michigan: §752.321, *et. seq.;* New Mexico: §12-4-1, *et. seq.;* Texas: Art. 6889-3; Wyoming: §9-12-101, *et. seq.*

[6]752.322(b).

[7]California: Corp. C.A. §35000, *et. seq.;* South Carolina: §23-29-10, *et. seq.*

for public employment, frequently requiring a non-Communist loyalty oath.[8] An additional fourteen states bar "subversives" from public employment.[9]

5. *State Investigations of the Communist Party*—The Maryland and Georgia legislatures have created the post of a special assistant Attorney General to investigate "Communism."[10] Three states have authorized executive investigations of "subversive activities"[11] and two others have set up legislative investigating committees or commissions.[12]

6. *Bars to "Communist Doctrine" in Schools*—Many States have laws designed to insulate schools and students from so-called "communist doctrine." Six have statutes mandating or authorizing high school courses on the "evils" of Communism (Louisiana), "the dangers and fallacies . . . of Communism," (Nebraska), "Americanism versus Communism" (Florida), or the

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[8] Arizona: R.S. 38-231; California: Gov. C.A. §1028; Ed. C.A. §§ 87735, 88122, 89537 & 87732; Ed. C.A. §§ 44932(k) & 45303, Ed. C.A. §7001; Florida: §876.05 *et. seq.;* Georgia: §89-312, *et. seq.;* Illinois: 127 §166(a) & (b); Indiana: §35-26-2-7; Louisiana: R.S. 14:371; Michigan: §752.328; New York: Civil Service Law §105, Public Affairs Law §35a; North Carolina: §166.A.13; Oklahoma: 51 §36.1 & 2; Texas: Art. 6252-7; Washington: §9.81.060, *et. seq.;* Wyoming: §§ 9-12-107, 102.

[9] Idaho: §59-401; Kansas: K.S. §§ 21-305, 48-917; Maine: 37-A §65; Maryland: 85A §10, *et. seq.;* also Const. Art. XV, §11; Massachusetts: c. 264, §14; Michigan: §30.204; Minnesota: §12.43; Nevada: §§ 281.330, 391.312, 284.425; New Hampshire: §648.12 *et. seq.;* New Mexico: §10-1-12; Ohio: §§ 124.36 & 5915.14; Oregon: §§ 401.160, 182.030 & 236.030; Pennsylvania: 65 P.S. 212, *et. seq.;* 53 P.S. §733; 16 P.S. §4221.4; Wisconsin: §22.16(9)(c).

[10] Georgia: §92A-1204; Maryland: 85A §6.

[11] Michigan: §28.51, *et. seq.;* Mississippi: §45-19-51; New Hampshire: §648:11.

[12] Ohio: §103.31, *et. seq.;* South Carolina: §2-31-10, *et. seq.*

like.[13] California and New Hampshire enjoin teachers from advocating Communism or presenting Communism as preferable to free enterprise.[14] Three states have textbook restrictions: Alabama proscribes textbooks written by members of the Party or a "communist front organization," and Nevada and New York bar "subversive," "seditious" and "disloyal" doctrines.[15]

7. *Additional Miscellaneous Provisions*—The extensive scope of anti-communist legislation is illustrated by the fact that, in addition to the foregoing, there exist many other provisions covering every sphere of activity. A sampling is indicated below:

Arizona, Nevada and Nebraska specifically except members of the Party from the protection of laws forbidding unlawful employment practices.[16]

Mississippi forbids Party members from holding union office, from holding a position with any employer's association dealing with labor relations, and from being a labor relations consultant.[17]

Texas has authorized its Board of Pharmacy to prevent Party members from obtaining or keeping pharmacy licenses.[18]

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[13] Alabama: §16-40-3; Florida: §233-064; Louisiana: R.S. §17.2851; Mississippi: §37-13-13; Nebraska: §79-213(5)(b); New York: Education Law §3204.3(a)(3).

[14] California: Ed. C.A. §8455; New Hampshire: Chapter 191:1.

[15] Alabama: §16-36-10; Nevada: §390.160; New York: Education Law §704.

[16] Arizona: §41-1463G; Nebraska: §48-1109; Nevada: §613.360.

[17] Mississippi: §71-1-49.

[18] Texas: Art. 4542a §12(i).

Party members are ineligible to serve as jurors in New York.[19]

Louisiana, it appears, has attempted to corner the market on such legislation, enacting, *inter alia*, the following provisions: The Louisiana State Library is required to set up a special "Anti-Communist" division.[20] Municipalities have been empowered to pass ordinances banning the sale of products from "Communist" countries.[21] It is a crime to deliver or store "Communist propaganda."[22] Finally, no Louisiana corporation may knowingly have an officer, manager or director who is "subversive."[23]

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[19] New York: Judiciary Law §665-a.

[20] Louisiana: R. S. 25 §17.

[21] Louisiana: R. S. 33 §4789.

[22] Louisiana: R.S. 14 §390, *et. seq.*

[23] Louisiana: R.S. 12 §1041.